IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6838 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NAFISA D/O. DAWOOD JAFFARJI KANCHWALA

Versus

STATE OF GUJARAT

Appearance:

MR BA SURTI for Petitioner

MR. KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 21/03/2000

ORAL JUDGEMENT

1. The petitioner's father-Dawood Jaffarji Kaanchwala has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by

Commissioner of Police, Surat City, Surat, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), dated 16th August, 1999.

2. The grounds of detention indicate that the detaining authority took into consideration one offence registered against the detenu as well as statements of four witnesses in respect of incidents dated 1st May, 199, 5th June, 1999, 27th June, 1999 and 14th July, 1999. Identity of the witnesses has not been disclosed by the detaining authority in exercise of powers under Section 9(2) of the PASA Act. The detaining authority also considered the possibility of resorting to less drastic remedies, but came to conclusion that, considering the illegal and anti-social activities of the detenu, it is necessary to immediately prevent him from pursuing his activities. The detaining authority came to conclusion that detention under PASA Act is the only efficacious remedy that can be resorted to, to immediately prevent the detenu from pursuing his activities.

3. The petitioner has challenged the order of detention on various counts. However, learned advocate, Mr. Surti has restricted his arguments to the fact that the subjective satisfaction recorded by the detaining authority for the need for exercise of powers under Section 9(2) of the PASA Act, cannot be considered as genuine. In order to substantiate his submission, Mr. Surti submitted that two of the statements were recorded on 30th July, 1999 and two were recorded on 6th August, 1999. All the four statements were verified by the detaining authority on 16th August, 1999 and the order of detention is passed on the very same day. He submitted, therefore, that there was no time for the detaining authority to give consideration to the question of correctness and genuineness of the facts stated by the witnesses and the fear expressed by the witnesses, respectively, in their statements. The exercise of powers under Section 9(2) of the PASA Act is improper and has resulted into denial of right of making an effective representation as contemplated under Article 22(5) of the constitution. Mr. Surti, therefore, submitted that, in light of the decision of a Division Bench of this Court in the case of Kalidas Chandubhai Kahar v. State of Gujarat & Ors., 1993(2) GLR 1659, this petition may be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. He, however, does not dispute the factual aspect of the verification of the

statements having been made on 16th August, 1999 and the order having been passed on the very same day.

5. It is clear from the grounds of detention that the detaining authority has taken into consideration the statements of two anonymous witnesses. The authority came to a conclusion that the fear expressed by the these witnesses is correct and genuine and, therefore, the authority exercised powers under Section 9(2) of the PASA Act by not disclosing the identity of the witnesses. This Court is at loss to appreciate how the detaining authority could have arrived at this conclusion in such short spell. The detaining authority has not filed any affidavit in reply. It is, therefore, not possible to know as to what were the factors and material considered by the detaining authority besides the statements of the anonymous witnesses to come to conclusion that the fear expressed by the witnesses was genuine, that the incidents stated by the witnesses were correct and that there was need for exercise of powers under Section 9(2) of the PASA Act.

6. Similar such situation arose before a Division Bench of this Court in the case of Kalidas Chandubhai Kahar (supra), where the statements were verified on 16th October, 1992 and the order was passed on 17th October, 1992 and the Division Bench said that exercise of powers under Section 9(2) of the PASA Act was improper. This improper exercise of powers under Section 9(2) of the PASA Act was held to be detrimental to the right of the detenu of making an effective representation contemplated under Article 22(5) of the Constitution. The order of detention was, therefore, quashed. The facts of the present case squarely fall in line with the facts of that case. The order of detention, therefore, stands vitiated in the instant case as well and the petition deserves to be allowed on this count alone.

7. In view of the above discussion, the petition is allowed. The impugned order of detention dated 16th August, 1999 passed against the detenu is hereby quashed. The detenu-Dawood Jaffarji Kaanchwala, is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J]

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